



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2009-0805; EPA-R05-OAR-2011-0969; FRL-9932-97-Region 5]**

**Illinois; Disapproval of State Board Infrastructure SIP**

**Requirements for the 2006 PM<sub>2.5</sub> and 2008 Ozone NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is disapproving an element of State Implementation Plan (SIP) submissions from Illinois regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter (PM<sub>2.5</sub>) and 2008 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the requirements of the CAA. This action pertains specifically to infrastructure requirements concerning state board requirements.

**DATES:** This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established dockets for this action under

Docket ID No. EPA-R05-OAR-2009-0805 (2006 PM<sub>2.5</sub> infrastructure elements) and EPA-R05-OAR-2011-0969 (2008 ozone infrastructure elements). All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of these SIP submissions?
- II. What is our response to comments received on the proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

**I. What is the background of these SIP submissions?**

This rulemaking addresses August 9, 2011, and December 31, 2012, submissions from the Illinois Environmental Protection Agency (Illinois EPA) intended to address all applicable infrastructure requirements for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the

requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

This specific rulemaking only takes action on the CAA section 110(a)(2)(E)(ii) requirement of these submittals. The majority of the other infrastructure elements were approved October 29, 2012 (77 FR 65478) and October 16, 2014 (79 FR 62042).

## **II. What is our response to comments received on the proposed rulemaking?**

The proposed rulemaking associated with this final action was published on June 12, 2015 (80 FR 33458), and EPA received no comments during the comment period, which ended on July 13, 2015.

## **III. What Action is EPA Taking?**

EPA is disapproving as proposed a portion of submissions from Illinois certifying that its current SIP is sufficient to meet the required infrastructure element under CAA section 110(a)(2)(E)(ii) for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. This final disapproval triggers the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the effective date of the disapproval unless

the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP.

#### **IV. Statutory and Executive Order Reviews.**

##### **Executive Order 12866: Regulatory Planning and Review**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

##### **Paperwork Reduction Act**

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### **Regulatory Flexibility Act**

This action merely disapproves state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### **Unfunded Mandates Reform Act**

Because this rule disapproves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

**Executive Order 13132: Federalism**

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

**Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by

Executive Order 13175 (65 FR 67249, November 9, 2000).

**Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it disapproves a state rule.

**Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use**

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

**National Technology Transfer Advancement Act**

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of

the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

**Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely disapproves certain state requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate,



disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

### **Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations, Ozone,  
Particulate matter.

Dated: August 14, 2015.

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.745 is amended by revising paragraphs (c) and (e) to read as follows:

**§52.745 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(c) Approval and Disapproval — In an August 9, 2011, submittal, and supplemented on August 25, 2011, and June 27, 2012, Illinois certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is approving Illinois' submission addressing the infrastructure SIP requirements of section 110(a)(2)(A), (B), (C) with respect to enforcement, (D)(i)(II) with respect to visibility protection, (D)(ii), (E) except for state board requirements, (F) through (H), (J) except for prevention of significant deterioration (PSD), and (K) through (M). EPA is not taking action on (D)(i)(I). EPA is disapproving the state board requirements of (E)(ii). EPA is disapproving Illinois' submission addressing PSD in (C), (D)(i)(II), and the PSD portion of (J). Although

EPA is disapproving portions of Illinois' submission addressing PSD, Illinois continues to implement the Federally promulgated rules for this purpose as they pertain to (C), (D)(i)(II), and the PSD portion of (J).

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(e) Approval and Disapproval – In a December 31, 2012, submittal, Illinois certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 ozone NAAQS except for 110(a)(2)(D)(i)(I). EPA is approving Illinois' submission addressing the infrastructure SIP requirements of section 110(a)(2)(A), (B), (C) with respect to enforcement, (D)(i)(II) with respect to visibility protection, (D)(ii), (E) except for state board requirements, (F) through (H), (J) except for prevention of significant deterioration (PSD), and (K) through (M). EPA is disapproving the state board requirements of (E)(ii). EPA is disapproving Illinois' submission addressing PSD in (C), (D)(i)(II), and the PSD portion of (J). Although EPA is disapproving portions of Illinois' submission addressing PSD, Illinois continues to implement the Federally promulgated rules for this purpose as they pertain to (C), (D)(i)(II), and the PSD portion of (J).

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